SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 252

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL.,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND ALLEN-BRADLEY COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

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No. 252

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, FRED WOLTER, ESTHER KUSMIEREK, ESTHER GREENMEIER, SOPHIE KOSCIERSKI, FRANCES CHANDEK, AGNES TANKO, HARRY ROSE, DAN ROKNICH, TONY CALABRESA, EDWARD OKULSKI, PETER BLAZEK, EILIF TOMTE, EDWARD LARSON AND MIKE DEMSKI,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND ALLEN-BRADLEY COMPANY, A WISCONSIN CORPORATION,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

APPELLEES' STATEMENT OPPOSING APPELLATE JURISDICTION.

Pursuant to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States, appellees file this statement opposing appellate jurisdiction.

Nature of the Case.

This appeal is from a judgment of the Supreme Court of the State of Wisconsin affirming a judgment of the Circuit Court of Milwaukee County, Wisconsin, which, in turn sustained and enforced an order of the Wisconsin Employment Peace Board (hereafter called "Wisconsin Board") made and entered under Section 111.07 of the Wisconsin Employment Peace Act—hereafter called "Wisconsin Act"—(Chapter 57, Laws of 1939; Wisconsin Statutes (1939), Chapter 111, sec. 111.01 to 111.19, pp. 1610-1618).

The order and judgment thereby sustained required the appellant Union, Allen-Bradley Local #1111, United Electrical, Radio & Machine Workers of America, to cease and desist from certain unfair labor practices. They contained no clause directed to the 14 individuals named as appellants. As to them, the action of the Wisconsin Board was limited to (a) the making of findings of fact that they committed violence and other acts of misconduct and (b) a conclusion of law that they were therefore guilty of unfair labor practices under the specific sections of the Wisconsin Act in question.

The judgment of the Supreme Court was entered January 7, 1941, in proceedings commenced by appellants in the courts of the State of Wisconsin to review the order of the Wisconsin Board. The real controversy arises over the validity of the portions of the Wisconsin Act on which the order is based, as applied to the appellants, because of their relationship to the appellee, Allen-Bradley Company, a Wisconsin corporation, so engaged in interstate commerce as to be subject to the National Labor Relations Act in a proper case.

Appellants conceded below that the Wisconsin Act regulates various phases of employer-employee relations or what

may be termed labor relations, as an exercise by the State of its police power. In their brief before the Wisconsin Supreme Court counsel stated that they did not attack the validity of the Wisconsin Supreme Court decision in *Fred Reuping Leather Co.* v. *Wisconsin Labor Relations Board*, 228 Wis. 475, to the effect "that the National Labor Relations Act had not pre-empted the field of labor relations, and that the Wisconsin Labor Relations Act of 1937 is equally applicable to parties engaged in interstate commerce and subject to the National Labor Relations Act. We assume, for purposes of appeal to this Court, that the State retains the right, based on its police powers, to enact a labor relations law which is consistent with the Federal regulation of the same subject." (Appellant's Brief in Wisconsin Supreme Court, pp. 59 and 60).

In their present assignment of errors and statement as to the jurisdiction on this appeal, appellants however now take the contrary position, that in enacting the National Act, Congress has completely pre-empted this field and that therefore the Wisconsin Act is invalid.

Appellants concede that the National Act regulates only the conduct of employ*ers* and creates only employ*er* unfair labor practices, but content, in spite of this, that the sections of the Wisconsin Act here involved which define and create unfair labor practices on the part of Unions and employ*es*, are, nevertheless, in direct conflict with the National Act, and are, therefore, repugnant to the Federal Constitution.

The field of labor relations is a matter which has always been subject to regulation solely by the States in the exercise of their police power. The only recognized exception arises from the indirect regulation of this subject by Congress through the enactment of the National Labor Relations Act, not based upon any power to regulate labor

relations as such, but based entirely upon the power to regulate interstate commerce.

Therefore, the contention that by this exercise of its power to regulate interstate commerce, Congress has deprived the States of all power and right to exercise their police powers in this entire field, is so startling as to immediately establish its unsoundness. The contention is all the more startling, in view of the fact that the Federal Act relates only to employer unfair labor practices, whereas the portions of the Wisconsin Act here involved relate entirely to unfair labor practices by unions and employees, —persons whose acts are in no way regulated or covered by the Federal Act.

Statutes Involved.

Article I. Section 8, of the Federal Constitution, so far as here material, provides:

> "Congress shall have the power to regulate the commerce with the foreign nations and among the several states."

The National Labor Relations Act (49 Statutes 449) so far as here material provides:

> "Sec 2. When used in this Act——
> " • • •
> " • • •
> "(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, • • •"
>
> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organiza-

tions, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"Sec. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"(2) To dominate or interfere . . ."

The Wisconsin Employment Peace Act, so far as material here, provides:

"111.02. Definitions. When used in this chapter:

". . .

". . .

"(3) The term 'employe' shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a non-executive or non-supervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise; and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and . . . (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, . . ."

"111.04 Rights of employes. Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

"111.06 What are unfair labor practices. . . .

". . .

"(2) It shall be an unfair labor practice for an employe individually or in concert with others:

"(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

"• • •

"(e) To cooperate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

"(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

"• • •

"(j) To commit any crime or misdemeanor in connection with any controversy as to employment relations.

"(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section."

Statement of Facts.

The respondent, Allen-Bradley Company, is a Wisconsin corporation engaged in the manufacture and sale of electrical control equipment and radio parts. Its plant is in Milwaukee where it employs approximately 700 people. For two years, the appellant Union had been the exclusive

bargaining agent of the Company's production employes and had had two annual labor contracts with the Company. The appellant Union and many of its members went out on a strike on May 11, 1939. The Company continued to operate its plant throughout the strike which lasted for about three months. During the course of the strike, the Union and many of the striking employes engaged in a deliberate and planned course of violence, threats, disorder, mass picketing, obstruction of streets, etc., for the admitted purpose of interfering with and, if possible, preventing the continued operation of the plant. The Company thereupon commenced a proceeding before the Wisconsin Board under Section 111.07 of the Wisconsin Act to prevent the continuance of these unfair labor practices.

After an extended hearing, the Board, in its Final Order, found that appellants had engaged in the following unfair labor practices:

(a) Engaged in mass picketing at all entrances for the purpose of hindering and preventing the pursuit of lawful work and employment by employes who desired to work. (Finding No. 5, R. 23, C. 21)

(b) Obstructed and interfered with the entrance to and egress from the factory and obstructed and interfered with the free and uninterrupted use of the streets and sidewalks surrounding the factory. (Finding No. 6, R. 23, C. 21)

(c) Threatened bodily injury and property damage to many of the employes who desired to continue their employment. (Finding No. 7, R. 23, C. 21)

(d) Required of persons desiring to enter the factory without interference that they obtain passes from the Union. (Finding No. 8, R. 23, C. 21)

(e) Picketing the domiciles of employes who continued to work. (Finding No. 9, R. 23, C. 22)

(f) That the Union by its officers and many of its members injured the persons and property of employes who desired to continue their employment. (Finding No. 10, R. 23, C. 22)

(g) That the 14 individual appellants who were striking employes, had engaged in various acts of misconduct, including intimidating and preventing employes from pursuing their work, by threats, force, coercion, and assault; by damaging property belonging to employes who continued to work; and as to one of them, by carrying concrete rocks which he intended to use to intimidate employes who desired to work. (Findings No. 11 to No. 17, R. 24-25, C. 22-23)

Based upon these Findings, the Board, as a Conclusion of Law, found that the Union was guilty of unfair labor practices in the following respects:

(a) Mass picketing for the purpose of hindering and preventing the pursuit of lawful work.

(b) Threatening employes desiring to work with bodily injury to their property.

(c) Obstructing and interfering with entrance to and egress from the factory.

(d) Obstructing and interfering with the free and uninterrupted use of the streets and public roads surrounding the factory.

(e) Picketing the domiciles of employes. (R. 25, C. 24)

As to the 14 individual appellants, the Board concluded that each of them was guilty of unfair labor practices by reason of threats, assaults, and other misdemeanors committed by them as set out in the Findings of Fact. (R. 25, C. 24)

Based upon these Findings of Fact and Conclusions of Law, the Board ordered that the Union and its officers, agents, and members shall:

(1) Cease and desist from:

(a) Mass picketing.

(b) Threatening employes.

(c) Obstructing or interfering with the factory entrances."

(d) Obstructing or interfering with the free use of public streets, roads, and sidewalks.

(e) Picketing the domiciles of employes.

(2) The Order required the Union to post notices at its headquarters that it has ceased and desisted in the manner aforesaid and to notify the Board in writing of steps taken to comply with the Order. (R. 26, C. 25)

So far as the 14 individual appellants are concerned the Final Order merely contains the conclusion that they are guilty of unfair labor practices. No further provision or order is made as to them.

The case was brought into the Circuit Court by the petition of the appellants to review this Order. Issue was joined by the Answer and Cross-Petition for enforcement of the Order by the Wisconsin Board (R. 29, C. 26), and by the Answer of the respondent Company. (R. 56, C. 50) The Circuit Court confirmed the Order and entered Judgment enforcing it.

It will be noted that the Order involved in this appeal is called "Final Order." After the hearing, the Board on July 13, 1939, issued its Interlocutory Order by which it made Findings of Fact, Conclusions of Law, and an Order substantially similar to the Final Order, except that it did not specifically find any individual employes

by name, to have been guilty of unfair labor practices. This Interlocutory Order was made pursuant to Section 111.07 (4), which provides that "pending the final determination by it of any controversy before it the Board may, after hearing make interlocutory findings and orders which may be enforced in the same manner as final orders."

The Board filed a Petition in the Circuit Court under Section 111.07 (7) to enforce the Interlocutory Order. A Decision confirming that Order was made by Judge Breidenbach December 14, 1939 (R. 111, C. 60), and pursuant thereto, Judgment enforcing the Interlocutory Order was entered January 4, 1940. (R. 133, C. 74)

Judge Breidenbach's decision confirming the Final Order refers in part to his decision confirming the Interlocutory Order. It appears at Record 61, Case 53. This appeal, however, is only from the Judgment which confirms and enforces the Final Order. As stated before, the only substantial difference between the Interlocutory Order and the Final Order is that the Final Order specifically names the 14 individual appellants and finds that they have committed unfair labor practices.

In the hearing before the Wisconsin Board, it was stipulated that a large part of the Company's business, both as to purchases and sales, is made from sources outside of the State of Wisconsin and to purchasers outside of the State; that the Company is, therefore, engaged in interstate commerce to a sufficient extent that if the National Labor Relations Board assumed jurisdiction by issuing a Complaint under the National Labor Relations Act (hereinafter called the "National Act"), the Company would concede the jurisdiction of the National Board to proceed under that Act (R. 164-165, C. 89)

The Board's interlocutory order was entered July 13, 1939. On petition for enforcement of that order by the Wisconsin Board the Circuit Court of Milwaukee County

sustained and enforced the order by opinion dated September 14, 1939, and a judgment dated January 4, 1940. No appeal was taken therefrom.

On February 1, 1940, the Wisconsin Board entered the final order. On petition by the appellants to review this final order and on cross petition by appellees for enforcement thereof, pursuant to express provisions of the Wisconsin Act, the final order was affirmed by the Circuit Court of Milwaukee County by opinion dated July 16, 1940, and enforcement thereof granted by judgment dated September 3rd, 1940. (R. 57, C. 58)

Judgment of the Supreme Court appealed from in the case before this Court was rendered upon appeal to the Supreme Court of Wisconsin by appellants herein from said last mentioned judgment.

No Substantial Federal Question is Presented.

An analysis of appellants' statement as to jurisdiction, their petition for appeal and assignment of errors establishes two grounds on which they claim a substantial Federal question is presented. They are:

1. That by enacting the National Labor Relations Act (Hereinafter called the "National Act") Congress has so pre-empted the field of labor relations, within the general scope of the National Act, as to make invalid the State's exercise of its police power in enacting legislation in this part of the field of labor relations.

2. That sec. 111.02 (3) (b) of the Wisconsin Act defining the term "employee * * * when used in this chapter," as applied to the fourteen individual appellants, is in direct conflict with sec. 2 (3) of the National Act defining "employee * * * when used in this act."

These contentions are so lacking in merit as to raise no *substantial* federal question.

The National Act Has Not Pre-empted the Entire Field of Labor Relations.

We agree with appellants' counsel that the National Act is a valid exercise of the constitutional power of Congress to regulate interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin S. Corp.*, 301 U. S. 1, 57 Sup. Ct. 615, 81 L. ed. 893; *Phelps Dodge Corp. v. National Labor Relations Board*, — U. S. —, 61 Sup. Ct. 845, 85 L. ed. 753.

It needs no citation of authority, however, to establish the proposition that in passing that act, based upon the congressional authority to protect interstate commerce, there was no intention, nor in fact was there power, to impair or restrict the general police power of the states. This is recognized by this Court in the *Jones & Laughlin* case in the following language:

> "If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall by reason of the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth amendment. * * * The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several states' and the internal concerns of a state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system." (Page 30)
>
> * * * * * * *
>
> "Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is

national and what is local and create a completely centralized government. (p. 37.)"

On this subject the Wisconsin Supreme Court said in the opinion in the instant case, 237 Wis. 164, at 173:

> "It is manifest from these and other declarations of the United States supreme court in the consideration of the provisions of the National Labor Relations Act that the federal government can proceed only so far with the regulation of labor relations as is necessary to protect interstate commerce, remove burdens from it, and prevent obstructions to it. The more study one gives to the National Labor Relations Act, the more he is moved to admire the consummate skill with which it was drafted for the declared purpose of regulating and protecting interstate commerce, and yet at the same time leaving the field of proper state action unrestricted so far as possible. * * *"

This Court is bound by the final decisions of the State Court interpreting and applying its own statutes. *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. ed. 1188; *Klaxon Co.* v. *Stentor Elec. Mfg. Co.* No. 741, October Term, 1940 (June 2, 1941).

The Supreme Court of Wisconsin held in this case that the Wisconsin Act was enacted as an exercise of the police power. In this connection it said:

> "The Wisconsin Employment Peace Act deals with labor relations in the exercise of the police power of the state." 237 Wis. 164, 179.

It reached a similar decision in the case of *Wisconsin Labor Relations Board v. Fred Rueping Leather Co.*, 228 Wis. 473, at p. 481, which involved the 1937 Wisconsin Labor Relations Act, superseded by the present Wisconsin Act here involved passed in 1939.

The various acts of misconduct which the judgment here forbids are acts of clear wrong doing. They are acts which

constitute violations of law in any society. They are acts, the commission of which in the long run are not in the best interest of the country or of labor itself. They are acts against which concededly the National Act affords no remedy.

As stated by the Wisconsin Supreme Court, at page 180, appellants contend in effect that the failure of Congress in enacting the National Act to define unfair labor practices on the part of unions or employees, in effect operates as a license to the employees in the enforcement of their demands to do any or all of the things declared by the Wisconsin Act and by this judgment to be unfair labor practices. The error in this contention is apparent. In fact it is interesting to note that in their own statement in support of jurisdiction, appellants' counsel concede that the National Act does not deprive the state of its police power to prohibit and punish acts of the very type covered by the judgment in this case. On the last page of their argument counsel state:

> "This is not a case where the State Act merely prohibits and punishes unlawful acts against the peace and order of the state committed by individuals in the course of a labor dispute. *There is no issue as to the existence of such powers in the state.*" (Emphasis ours)

The National Act is not a general regulation by Congress of the entire field of labor relations. It is nothing more than a regulation of interstate commerce by regulating, in limited and specific manner, the conduct of employers only —one small part of the field of labor relations.

In *Amalgamated Utility Works* v. *Consolidated Edison Co.*, (1940) 309 U. S. 361, 84 L. ed. 738, this Court held that a union, which had been a party in a case before the National Labor Relations Board, had no standing to press a

charge of contempt for violation of the Board order on the ground that the act created no private rights,—that the Board's order was made on behalf of the public and that the Board was the sole authority to secure the prevention of unfair labor practices under the Act. The court held further in the case (p. 363) that no provision of the National Act

> "• • • can properly be said to have 'created' the right of self-organization or of collective bargaining through representatives of the employees' own choosing. In National Labor Relations Bd. *v.* Jones & L. Steel Corp. 301 U. S. 1, 33, 34, 81 L. ed. 893, 909, 910, 57 S. Ct. 615, 108 A. L. R. 1352, we observed that this right is a fundamental one; that employees 'have as clear a right to organize and select their representatives for lawful purposes' as the employer has 'to organize its business and select its own officers and agents;' that discrimination and coercion 'to prevent the free exercise of the right of employees to self-organization and representation' was a proper subject for condemnation by competent legislative authority. We noted that 'long ago' we had stated the reason for labor organizations,—that through united action employees might have 'opportunity to deal on an equality with their employer,' referring to what we had said in American Steel Foundries *v.* Tri-City Central Council, 257 U. S. 184, 209, 66 L. ed. 189, 199, 42 S. Ct. 72, 27 A. L. R. 360. And in recognition of this right, we concluded that Congress could safeguard it in the interest of interstate commerce and seek to make appropriate collective action 'an instrument of peace rather than of strife.' To that end Congress enacted the National Labor Relations Act."

The regulation of labor relations generally is a subject which has always been considered as properly belonging to the states under the police power. It was a field which many persons believed to be exclusively reserved to the

states. The Supreme Court of Wisconsin in the opinion in this case, at pages 176 and 177, said this with respect to that subject:

> "• • • Prior to the adoption of the National Labor Relations Act and the decision of the United States Supreme Court sustaining it, many persons supposed labor relations to be a subject reserved to the states by the Tenth amendment to the constitution of the United States and that it was beyond the competency of congress to deal with the subject. No doubt it is because of that fact that the act so meticulously delimits the power and authority of the labor board to matters which substantially affect interstate commerce, that being a subject over which congress has, when it is exercised, exclusive jurisdiction. Hence congress does not seek in the National Labor Relations Act to deal with labor relations generally. It deals with labor relations only so far as in its opinion it is necessary to protect interstate commerce from being impeded or obstructed by unfair labor practices on the part of employers."

To the same effect is *Wisconsin Labor Relations Board* v. *Fred Rueping Leather Co.*, 228 Wis. 473, 488-489.

It is clear, therefore, that the National Act rests entirely upon the power of Congress to regulate interstate commerce and to protect it from burdens and obstructions, while the Wisconsin Act is a regulation of "• • • labor relations in the interests of the peace, health and order of the state • • •". *Wisconsin Labor Relations Board* v. *Fred Rueping Leather Co., supra.* That case held further that in the absence of a Federal statute pre-empting the field "the police power of the state has full operation, provided no undue or discriminatory burdens are put upon interstate commerce.

The fact that the National Act has not pre-empted the field of labor relations so as to exclude the States from legis-

lating in that field, is established further by the decision of this Court in *Lauf* v. *E. G. Shinner & Co.*, (1938) 303 U. S. 323, 58 S. Ct. 578, 82 L. Ed. 872. In that case this court gave effect to the Wisconsin Labor Code, as there involved, and held that the construction and application of the Wisconsin constitution and statutes by the Wisconsin Supreme Court was conclusive upon the district court and upon this Court. That case was decided by the court after the enactment of the National Act, which was passed in 1935. The sections of the Wisconsin Labor Code, there given effect, regulated to a certain extent the matter of labor relations.

It probably was a consciousness of that decision which led to the admission by appellants' counsel in their jurisdictional statement of the existence of State power to prohibit and punish unlawful acts against the peace and order of the State, although committed in the course of a labor dispute.

But this admission of power in the State to so exercise its police power in the field of labor relations is much too limited.

Counsels' admission that the State may prohibit or punish certain conduct during a labor dispute, admits the continued existence of police power to regulate labor relations. The Wisconsin Supreme Court states this conclusion as follows in the opinion herein, at page 184, as follows:

> "When appellants concede that the state may punish unlawful acts of strikers who are engaged in striking because of unfair labor practices of their employer, they concede the power of the state to deal with some aspects of every labor dispute. • • •"

The existence of such power necessarily leaves the State free to exercise it as the State desires so long as the State action does not directly conflict with national action or

otherwise unduly discriminate against, burden or obstruct interstate commerce.

No claim is made in this case that the Wisconsin Act unduly discriminates against, burdens or obstructs interstate commerce.

The Wisconsin Supreme Court, in speaking of the Wisconsin Act said further:

> "On the other hand, state action is regulatory in its nature and is designed to bring about industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services for the promotion of the general welfare. • • • The state act seeks to forestall action which may lead to disorder and loss of life and property." (R. 184.)

The Provisions of the Wisconsin Act Here Involved Are Not in Conflict With the National Act.

Appellants' main contention as to conflict is based upon a difference between the definition of "employee" in the two acts. The alleged conflict disappears, however, upon giving effect to the decision of Wisconsin Supreme Court in this case, construing and applying the Wisconsin definition. Appellants contend that the 14 individual appellants who were found guilty of unfair labor practices are still employees under the terms of the National Act but that their employee status terminated because of the findings of fact and conclusions by the Wisconsin Board that they were guilty of an unfair labor practice. Appellants' contention in this respect is stated as follows in their statement as to jurisdiction:

> "Under sec. 111.02 (3) (b) of the State Act set forth above, striking employees, who are found guilty of unfair labor practices, *automatically* lose their status as employees for the purposes of the State Act." (Italics ours.)

In making this contention counsel entirely ignore the express and unequivocal langauge in the decision of the Wisconsin Supreme Court on this phase of the case. As pointed out above, the Board's order in this case made no order as to the individual appellants. It contained *findings of fact* as to the various acts of misconduct of which they were guilty, and a conclusion of law that each of them was guilty of unfair labor practices by reason of the threats, assaults and other misdemeanors committed by them as set out in the findings. *But it contained no further provision or order as to them.*

In disposing of the same contention made by appellants before Wisconsin Supreme Court, it said:

> "• • • a mere finding of the Wisconsin Employment Relations Board does not affect the employer and employee relationship." (R. 182.)

In discussing this matter the court said with respect to sec. 111.02 (3), the section on which appellants' counsel base their contention:

> "Considering the language of this section by itself, it may warrant the interpretation put upon it by appellants, that is, that a mere finding is sufficient to deprive the employee of his status. However, when considered in connection with other provisions of the act, we think it cannot be so interpreted. That part of sec. 111.07 (4), Wis. Stats. 1939, which is material here is as follows:
>
> "'Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this chapter for not more than one year, and require him to take such affirmative action including reinstatement of employees with or without pay, as the board may deem proper.'
>
> "The continuation of the status of an employee is certainly a right or privilege. The act specifically pro-

vides how it shall be terminated, that is by order of the board." (R. 182.)

The court then held that sec. 111.07 (7) and (8) of the Wisconsin Act providing for a review of the Board orders makes no provision for "reviewing the findings", and goes on to say that the court:

> "• • • examines the record to ascertain whether the findings are supported by the evidence. Its judgment may operate only upon the provisions of the order. It is considered, in view of the large discretionary power committed to the board, that the act affects the rights of parties to a controversy pending before the board only in the manner and to the extent prescribed by the order.
>
> "• • • •
>
> "As already stated, the manner and the extent to which the act shall apply in a particular case pending before it is committed to the discretion of the board. Its commands are found in the order, which determines the status and obligations of all parties to the controversy, not in the findings. In the board's order under review, there is no provision which suspends the status as employees of the fourteen individual appellants found guilty of unfair labor practices. In this case, for the reasons stated, there is no conflict in regard to employee status." (R. 185.)

Since this construction of the Wisconsin Act is binding on this Court, it is clear that there is nothing in the Wisconsin statute nor in the order of the Board affirmed by this judgment which in any way suspends or terminates the status of these employees, as appellants' counsel still maintain.

Consequently such rights as they may have under the National Act continue unaffected by the judgment here appealed from. Therefore there can be no conflict between the two laws in this regard.

The Wisconsin Supreme Court pointed out another complete answer to this phase of the case as follows:

> "In response to the argument made by appellants that there is a conflict between the two acts because of the difference in definitions, we point out that these definitions apply only for the purposes of the act in which they are found. In sec. 2 of the National Labor Relations Act certain terms used in the act are defined. That sections begins, 'When used in this act,' the various terms defined mean thus and so. Definitions of terms in the Wisconsin Employment Peace Act are found in sec. 111.02, Wis. Stats. 1939. That section begins, 'When used in this chapter,' the term defined includes or means thus and so. In controversies in which the National Labor Relations Board takes jurisdiction, it will in the course of its determination apply the definitions contained in the National Labor Relations Act. When the Wisconsin Employment Relations Board takes jurisdiction of a labor dispute it will apply the definitions contained in the Wisconsin Employment Peace Act in formulating its determinations. * * *"

There are No Other Issues in This Case.

In their statement as to jurisdiction, appellants' counsel state "the appellants have drawn into the question the entire act on the ground that in its entirety it is repugnant to the commerce clause of the Federal constitution and the National Labor Relations Act." Nowhere does counsel argue that the Wisconsin Act in any way burdens or obstructs interstate commerce. Nothing is clearer than the principles that a statute, or the portion thereof attacked, will be presumed to be constitutional, that the court will limit its decision to the issues involved and will not engage in broad declarations upon constitutional questions as to portions thereof not involved in the case before the court. No principle of law is more firmly established than that no

litigant can be the champion of constitutional rights except to the extent that his own rights are affected.

Lehon v. *Atlanta*, 242 U. S. 53, 56, 61 L. Ed. 145;
Bandini Petroleum Co. v. *Superior Court* (1931), 284 U. S. 8, 76 L. Ed. 136-145;
Southern Petroleum Co. v. *King* (1910), 217 U. S. 524, 534, 54 L. Ed. 868.

As stated by Justice Cardozo in *Henneford* v. *Silas Mason Co.* (1937), 300 U. S. 577, 57 S. Ct. 524, 81 L. Ed. 814:

> "• • • The plaintiffs are not champions of any rights except their own." (R. 583.)

The case at bar involves only issues of unfair labor practice by the union and by employees. The National Act creates unfair labor practices only on the part of employer. As stated in the opinion of the Wisconsin Supreme Court:

> "In this case the employer has never been charged with an unfair labor practice nor has the National Labor Relations Board ever been requested to determine who is the proper bargaining representative. Consequently, the National Labor Relations Act has never been applied to the labor dispute here under consideration, and it may never be applied, depending upon the exercise of the discretion of the National Labor Relations Board. • • •" (R. 180.)

The judgment in this case affirming the Board's order does nothing more than to require the appellant Union, its officers, agents and members to cease acts of misconduct which would constitute violations of law in any society. The conduct ordered to end includes mass picketing, threatening employees, and obstructing or interfering with the free use of roads, streets and sidewalks.

As stated in the petition for appeal the order is based upon the company's charges of violations of sec. 111.06 (2a)

to (j) and sec. 111.06 (3) of the Wisconsin Act, which define certain acts to be unfair labor practices. No other portion of the Act is involved or in issue in this case. Therefore the attempt of appellants to bring into question and challenge other sections of the Act not involved in the judgment here appealed from, is clearly erroneous.

Conclusion.

We submit, therefore, that no substantial Federal question is here presented because

(a) Congress has not pre-empted the entire field of labor relations in enacting the National Act;

(b) The State of Wisconsin still has the right in the exercise of its police power to regulate in the field of labor relations so long as in so doing the State does not directly conflict with the National Act or burden or obstruct interstate commerce;

(c) The order in this case and the judgment affirming said order merely prohibit the commission of acts in themselves wrongful in any society.

(d) The Wisconsin Act and the judgment in this case as construed and applied by the Wisconsin Supreme Court does not in any way affect the employee status of the fourteen individual appellants;

(e) Within the issues of this case the Wisconsin Act and the judgment in no way conflict with the National Act and in no way burden or obstruct interstate commerce.

(f) The various hypothetical conflicts which appellants endeavor to raise are in no way involved in this case.

From the foregoing it is submitted that the decision of the Supreme Court of Wisconsin on the Federal question is so

plainly right as not to require re-argument and therefo
no substantial Federal question is presented.

Re Boardman (1897), 169 U. S. 39, 42 L. Ed. 653, 18
Ct. 291;

Re Spies (1887), 123 U. S. 131, 31 L. Ed. 80, 8 S. Ct.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 252

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, FRED WOLTER, ESTHER KUSMIEREK, ESTHER GREENMEIER, SOPHIE KOSCIERSKI, FRANCES CHANDEK, AGNES TANKO, HARRY ROSE, DAN ROKNICH, TONY CALABRESA, EDWARD OKULSKI, PETER BLAZEK, EILIF TOMTE, EDWARD LARSON AND MIKE DEMSKI,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, AND ALLEN-BRADLEY, A WISCONSIN CORPORATION,

Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

MOTION TO DISMISS APPEAL OR AFFIRM.

Comes Now the Wisconsin Employment Relation Board, by John E. Martin, Attorney General of the State of Wisconsin, James Ward Rector, Deputy Attorney General of the State of Wisconsin, and N. S. Boardman and Harold H. Persons, Assistant Attorneys General of the State of

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Wisconsin, its counsel, and Allen-Bradley Company, by Louis Quarles and Leo Mann, its counsel, appellees herein, and move this Court to dismiss with costs the appeal taken herein to this Court by the above named appellants upon the following grounds:

1. No substantial Federal question is involved.

2. The decision of the Supreme Court of Wisconsin is in accord with the decisions of this Court.

3. The decision of said State court was so plainly right as not to require reargument.

In the alternative appellees move this Court to affirm on the ground that the questions on which the decisions of the cause depend are so unsubstantial as not to need further argument.

Dated this 16th day of June, 1941.

JOHN E. MARTIN,
Attorney General of the State of Wisconsin;
JAMES WARD RECTOR,
Deputy Attorney General of the State of Wisconsin;
N. S. BOARDMAN
and
HAROLD H. PERSONS,
Assistant Attorneys General of the State of Wisconsin;
Counsel for Appellee Wisconsin Employment Relations Board;
LOUIS QUARLES
and
LEO MANN,
Counsel for Appellee Allen-Bradley Company.